SUPREME COURT OF THE UNITED STATES.

No. 454.—October Term, 1925.

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Leo A. Price, as Receiver of J. M. Gidding & Company, Petitioner, *vs.* United States of America.	Writ of Certiorari to United States Circuit Court of Appeals, Second Circuit.

[January 11, 1926.]

Mr. Justice Butler delivered the opinion of the Court.

October 2, 1923, Charles H. Mears, a simple contract creditor, brought suit on behalf of himself and other creditors against J. M. Gidding & Company, a New York corporation. Among the facts alleged in the complaint are these. Defendant was engaged in the business of importing and selling wearing apparel at retail in New York and four other cities. It owed plaintiff $10,000 on a promissory note; its debts were large, and it was without money to pay those then due and shortly to become due. If its assets could be sold in the usual course of business they would be in excess of its debts. Some of the creditors were pressing their claims, and others had commenced suit; and, if the assets were not taken into judicial custody, some creditors might obtain inequitable preferences as against plaintiff and other creditors; and the assets might not be enough to pay all. And, averring no adequate remedy at law, the complaint prayed the court to determine the rights of all creditors, and to appoint a receiver to take possession and control of all defendant's assets, and that, when just and proper, the assets be ordered sold and the proceeds distributed to those entitled thereto. On the same day, defendant filed its answer admitting the allegations and joining in the prayer of the complaint. The court immediately entered its decree granting the relief prayed, and appointed appellant temporary receiver with authority to take possession and control of, and to make disbursements to preserve, the assets. January 9, 1924, the court appointed appellant permanent receiver. Thereupon, the assets were found insufficient

to pay all the claims; general creditors will not receive more than 40 per cent.

The United States filed proof of claims for income taxes for the year 1920, and for unpaid customs duties. A special master sustained the claim of the United States to priority, and fixed the amount of the income tax at $11,331.07, and the amount of the duties at $1,086.70. The District Court directed appellant, out of the assets of defendant, to pay these amounts as priority claims. The Circuit Court of Appeals affirmed the decree on the authority of *Liberty Mutual Insurance Company* v. *Johnson Shipyards Corporation,* 6 Fed. (2d) 752. The case is here on writ of certiorari. § 240, Judicial Code.

The word "debts" as used in R. S. § 3466 includes taxes.

The claim of the United States does not rest upon any sovereign prerogative; but the priority statutes were enacted to advance the same public policy which governs in the cases of royal prerogative; that is, to secure adequate public revenue to sustain the public burdens. *United States* v. *The State Bank of North Carolina,* 6 Pet. 29, 35. And to that end, § 3466 is to be construed liberally. Its purpose is not to be defeated by unnecessarily restricting the application of the word "debts" within a narrow or technical meaning. Cf. *Miller* v. *Robertson,* 266 U. S. 243, 248. The meaning properly to be attributed to that word depends upon the connection in which it is used in the particular statute and the purpose to be accomplished.

In the absence of another remedy made exclusive, an action of debt lies to recover taxes where the amount due is certain or readily may be made certain. *United States* v. *Chamberlin,* 219 U. S. 250, 262; *Savings Bank* v. *United States,* 19 Wall. 227, 239; *Stockwell* v. *United States,* 13 Wall. 531, 542; *Meredith* v. *United States,* 13 Pet. 486, 493; *United States* v. *Washington Mills,* 2 Cliff. 601, 607; *United States* v. *Pacific Railroad,* 4 Dill. 66.

Section 3466 of the Revised Statutes is derived from early statutes enacted for the collection of taxes.* The Act of 1789 per-

*"An Act to regulate the Collection of the Duties imposed by law on the tonnage of ships or vessels, and on goods, wares and merchandises imported into the United States", approved July 31, 1789, § 21, c. 5, 1 Stat. 29, 42. "An Act to provide more effectually for the collection of the duties imposed by law on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels", approved August 4, 1790, § 45, c.

mitted bonds to be given for payment of customs duties, and provided that in case of default the collector should prosecute suits for recovery, and that in all cases of insolvency, or where any estate in the hands of executors or administrators should be insufficient to pay all the debts of the deceased, the debt due to the United States on any such bonds should be first satisfied. The Act of 1790 superseded the earlier Act, but retained the same priority provision. The Act of 1792 gave to sureties the right of subrogation (see R. S. § 3468); and it limited priority to cases in which insolvency should be manifested in one of the modes stated. Prior to the passage of the Act of 1797, an internal revenue had been established and extensive transactions had taken place, in the course of which many persons had become indebted to the United States. *United States* v. *Fisher*, 2 Cranch 358, 392. Up to that time, the priority applied only to cases of default on customs bonds. By that Act, it was extended to cases involving "any revenue officer or other person hereafter becoming indebted to the United States by bond or otherwise." The Act of 1799 introduced the provision making every executor, administrator, assignee or other person answerable for failure to pay the United States first. See R. S. § 3467. The revision did not involve any substantial change of phraseology and did not work any change in the purpose or meaning of the priority acts. *Buck Stove Company* v. *Vickers*, 226 U. S. 205, 213. There is no reason for any distinction in respect of priority between taxes and other amounts owing to the United States. Indeed, it would be quite without reason to deny priority in case of claims for taxes due from taxpayers, and to give priority to claims against revenue officers and others on account of taxes collected by them.

Lane County v. *Oregon*, 7 Wall. 71, and *Meriwether* v. *Garrett*, 102 U. S. 472, are sometimes cited, and expressions found in the opinions are quoted, to show that taxes are not debts. But when regard is had to the questions decided in these cases, it is clear that

35, 1 Stat. 145, 169. "An Act for raising a farther sum of money for the protection of the frontiers, and for other purposes therein mentioned", approved May 2, 1792, § 18, c. 27, 1 Stat. 259, 263. "An Act to provide more effectually for the Settlement of Accounts between the United States, and Receivers of public Money", approved March 3, 1797, § 5, c. 20, 1 Stat. 512, 515. "An Act to regulate the collection of duties on imports and tonnage", approved March 2, 1799, § 65, c. 22, 1 Stat. 627, 676.

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they do not sustain the view that, as used in § 3466, the word "debts" does not include taxes due the United States. The question in *Lane County* v. *Oregon* was whether under the Acts of Congress making United States notes "legal tender in payment of all debts", the State was bound to accept such notes in payment of taxes required by its own laws to be paid in gold and silver coin. The court held that the Acts had no reference to taxes imposed by state authority. There were two clauses which were intended to give currency to the notes. In one of them, taxes were plainly distinguished from debts; and it was held that the word "debts" in the other was not intended to include taxes. In *Meriwether* v. *Garrett,* it was held that taxes levied before the repeal of a city charter—other than those levied under lawful contract or judicial direction—could not be continued in force by the court after the repeal of the charter; that they had none of the elements of property and could not be seized by judicial process, and could only be collected under authority from the legislature.

Defendant made a voluntary assignment of its property within the meaning of § 3466.

By answering and joining in the prayer of the complaint, defendant cooperated with the plaintiff to secure the appointment of a receiver to whom it immediately handed over possession and control of all its property and business. While in effect the complaint alleged that defendant was solvent, the facts set forth indicate that it was in a failing condition. And it was found to be insolvent within a short time after the appointment of the receiver. When the assets turned out to be less than the debts, the creditors were entitled to have them dealt with as a trust fund and distributed among them according to their rights and priorities. Under the statute, claims of the United States must first be satisfied. *Bramwell* v. *United States Fidelity & Guaranty Company,* and *United States* v. *Butterworth-Judson Corporation,* decided this day.

Decree affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.